Red Deer County

NOTICE OF DECISION

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Pursuant to Section 14 of Red Deer County Land Use Bylaw No. 2006/6 and Section 687(2) of the Municipal Government Act:

TO: Wendell Miller
6M Holdings Ltd.

DATE OF DECISION: January 20, 2011

RE: IN THE MATTER OF THE LAND USE BYLAW NO. 2006/6 AND THE MUNICIPAL GOVERNMENT ACT and IN THE MATTER OF an appeal made by Wendell Miller, 6M Holdings Ltd., appealing the September 21, 2010, decision of the Municipal Planning Commission denying the application for Aggregate Removal to initiate a gravel pit operation on NW 18-36-1-5, NE 13-36-2-5 and SE 24-36-2-5.

DATE OF HEARING: November 1, 2010, and January 10, 2011.

DECISION OF THE BOARD

Having heard and reviewed all the oral and written submissions accepted by the Board and having considered the provisions of the Municipal Government Act (MGA) and the applicable Land Use Bylaw, the policies thereto as well as the applicable statutory plans, this appeal is **denied,** and the decision of the Municipal Planning Commission to deny the application for Aggregate Removal to initiate a gravel pit operation on NW 18-36-1-5, NE 13-36-2-5 and SE 24-36-2-5, is upheld.

REASONS

1. The subject property is zoned "Agricultural District" and "Aggregate Removal" is a discretionary use within this district. The Board is aware that Discretionary Uses are considered a Use for which a development permit may be issued. The Board further considered that the Municipal Government Act requires that in determining this appeal the Board must comply with the Land Use Bylaw of the County and that since this is not an application for a variance or relaxation, s. 687(3)(d) of the MGA is not applicable.

2. The Board had regard to Section 22.3 of the LUB which directs that in making a decision on a Development Permit application for a Discretionary Use, the Development Authority:

   a) may approve the application if it meets the requirements of this Bylaw, with or without conditions, based on the merits of the application including any approved plan in accordance with the County's plan hierarchy or approved policy affecting the site; or
   b) may refuse the application even though it meets the requirements of this Bylaw; or,
   c) shall refuse the application if the proposed development does not conform to this bylaw.

3. The Board had regard to Section 22.4 of the LUB which directs that in making a decision on a Development Permit application for a Discretionary Use, the Development Authority shall have regard to:

a) the circumstances and merits of the application, including but not limited to:
   i) the impact on properties in the vicinity of such nuisance factors as smoke, airborne emissions, odours and noise;
   ii) the design, character and appearance of the proposed development and in particular whether it is compatible with surrounding properties;
   iii) any or all of the matters, but not limited to those listed in Section 27.1; and
   iv) the servicing and access requirements for the proposed development.
b) the purpose and intent of any approved plan in accordance with the County's plan hierarchy; and
c) the purpose and intent of any relevant policy adopted by the County.

4. Existing residential properties are located adjacent to the proposed development area, one being located within the same quarter section (NW 18-36-1-5) ("the Telford residence") and the other being located directly across the river to the east in NE 18-36-1-5 overlooking and downwind of the subject lands ("the Hansen residence"). A residence with a farming operation is located in the quarter section to the south (SW 18-36-1-5) of the proposed development area ("the Christian farm").

5. The Board finds that the proposed use of subject land for Aggregate Removal and its design, character and appearance are not compatible with the adjacent existing residential uses and agricultural use due to the industrial nature of this proposed development and the nuisances it would create, specifically dust and noise from the extraction, processing and hauling of the aggregate. The Board was not satisfied that the attenuation measures proposed by the applicant such as blanketing the crushing equipment would adequately address the nuisance caused by the noise.

6. In deciding to deny the appeal, the Board also considered the Applicant's proposed hours for operation, for hauling and for crushing. The nuisances resulting from those activities would be intolerable for those residing on adjacent lands without more relief than the proposed hours would allow.

7. While the Board was satisfied it was necessary to deny the appeal because of the close proximity of the Telford residence, the Hansen residence and the Christian farm, the Board also had regard for the impact of the nuisances that would be caused by the proposed use on others residing in the area of the subject lands, some of whom made submissions to the Board.

8. The Board does not have the expertise and qualifications to analyze and assess all of the technical evidence presented to the Board in relation to environmental impacts of the proposed development. It was apparent to the Board, however, that the elevation of the reclaimed, mined area would drop approximately the depth of the removed gravel, creating a significant depression over a large area in close proximity to the Medicine River, Dickson Creek and several surrounding residents. The Board does not consider it to be good planning to permit this change of topography in proximity to the Medicine River and the Dickson Creek given that at some point either or both may spill over their banks and flood waters would naturally be directed to this low area which would be proximate to the Telford residence in particular.

9. The Board also did note a concern that Phase 2 of the proposed development was located within the Flood Fringe of the Medicine River (noted on the 1:100 Flood Risk Mapping Medicine River, prepared by Aspen Land Group Inc. revised on February 10, 2010). As is stated on page 68 of the "Flood Risk Mapping Study Red Deer River, Dickson Dam to Red Deer Including Markerville" submitted by AMEC Earth & Environmental to Alberta Environment and dated March 2007, "Development in the flood fringe may be permitted

provided that it is adequately flood proofed." The Board is not satisfied that the Berms that the Applicant proposes to construct would represent adequate flood proofing or that adequate flood proofing is possible.

10. The Board did conclude that even if environmental issues were resolved and all requisite approvals were obtained by the Applicant from provincial or federal regulatory agencies, the Board would not approve the application due to the nuisances that would be created by the development for the adjacent property owners as indicated in the above reasons.

If you wish to appeal this decision, you must follow the procedure prescribed in Section 688 of the Municipal Government Act, as follows:

Section 688(1) "An appeal lies to the Court of Appeal of the Province, on a question of law or jurisdiction with respect to a decision of the Subdivision and Development Appeal Board."

Section 688(2) "An application for leave to appeal pursuant to subsection (1) must be made to a judge of the Court of Appeal within 30 days after the issue of the decision sought to be appealed, and notice of the application must be given to:

(a) the Municipal Government Board or the Subdivision and Development Appeal Board; and

(b) any other persons that the Judge directs."

Section 688(3) "On hearing the application and the representations of those persons who are, in the opinion of the Judge, affected by the application, the Judge may grant leave to appeal if the Judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success."

SUBDIVISION AND DEVELOPMENT APPEAL BOARD
RED DEER COUNTY

PER: _____
CHAIRPERSON